

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**RACHEL B LIVIO**  
Claimant

**APPEAL NO. 13A-UI-11851-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 09/22/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 10, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Rachel Antonuccio, Attorney at Law. Lindy Helm participated in the hearing on behalf of the employer with a witness, Kathy Truelson.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a production worker for the employer from January 2, 2013, to September 20, 2013. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and was subject to discharge when she received eight attendance points.

The claimant received points as follows:

Date	Reason	Points
January 30	Absent for personal reasons	1 point
February 22	Late for work	½ point
April 23	Left work early	½ point
May 3	Late for work	½ point
May 8	Left work early	½ point
May 9	Late for work	½ point
June 7	Late for work	½ point
July 30	Left work early	½ point
August 26	Late for work	½ point
August 27	Late for work	½ point
August 28	Left work early	½ point
September 4	Left work early	½ point
September 11	Absent for personal reasons	1 point

September 12	Late for work (13 minutes)	½ point
Total		8 points

The claimant was warned about her attendance on May 20 and September 9, 2013. She was informed that her job was in jeopardy after the September 9 warning. The claimant left work early due to her child's medical appointment on July 30. Her husband was hospitalized after a car accident on the evening of August 26. She was late for work on August 27 because she was at the hospital all night. She left work early on August 28 with permission from a supervisor after she received a call from a social worker saying she needed to come to the hospital.

The claimant was absent from work on September 11 because her car broke down and needed to be fixed. She called in and reported that she would not be at work. She did not call the employer before reporting to work late on September 12. She also did not punch in when she reported 13 minutes late but a supervisor recorded her arrival time.

The claimant continued to work through the next week because attendance records were not immediately reviewed. Once it was determined by human resources that the claimant had eight points, she was discharged for excessive absenteeism on September 20, 2013.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

While some of the dates on which the claimant received attendance points were for legitimate reasons (for example, July 30, August 27, and August 28), the claimant did not have explanations for all her absences or times when she was late or left work early. She was warned about her attendance. In *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984), the Court noted that absenteeism arising out of matters of purely personal responsibilities such as child care and transportation are not considered excusable. Therefore, the absence on September 11 was not excused. The claimant denied reported to work late on September 12, but the employer's human resources specialist, Lindy Helm testified credibly that the claimant's supervisor logged in when she reported to work and she was 13 minutes late. I believe Helm's testimony. The claimant was late, has not presented an excuse for being late, and did not notify

the employer that she was going to be late. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

Finally, the unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8). The Iowa Court of Appeals considered this rule in *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). In *Greene*, the court ruled that to determine whether conduct prompting the discharge constitutes a disqualifying current act, the decision maker must consider the date on which the conduct came to the employer's attention and the date on which the employer notified the employee that the conduct provided grounds for dismissal. Any delay in taking action must have a reasonable basis. *Id.* at 662. I conclude the eight-day delay from September 12 to 20 had a reasonable basis, considering the process used for reviewing attendance records.

**DECISION:**

The unemployment insurance decision dated October 10, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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